



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/153318

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 06, 2013, under Wis. Admin. Code §HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 26, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly discontinued petitioner's FS effective September 1, 2013 for failing to complete her six month review.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Jose Silvestre  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 22, 2013 the agency issued petitioner the forms to complete her six month review form (SMRF). The forms state that she should return the SMRF to the agency by August 5, 2013. Exhibit 3.

3. On August 5, 2013 petitioner provided the SMRF to the agency. Exhibit 6.
4. On August 19 and 20, 2013 the agency issued notices of decision to petitioner stating that effective September 1, 2013 her FS would end for failing to complete the SMRF. Exhibit 4 and 5. Her FS closed on September 1, 2013.

### **DISCUSSION**

An agency and FS recipient must perform a periodic review of eligibility during specific time intervals (i.e., 6 or 12 months) as a condition of ongoing FS eligibility for the recipient. See 7 CFR §273.14(a), 7 CFR 273.10(f), and *FoodShare Wisconsin Handbook*, §2.2.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

Petitioner testified to faxing in her SMRF on August 5, 2013 and provided a fax confirmation showing the same. For reasons uncertain here, the agency did not have the SMRF in its records or consider her fax confirmation of same to be enough to show that she met the deadline for submitting it. It appears that petitioner was doing all she could to comply with the agency's review requirements, and her records show the SMRF was sent correctly. I am therefore remanding the matter. If the agency requires a new SMRF or further verification, it must request it of petitioner. I am allowing 20 days for that to occur. Petitioner is reminded to keep copies of what she provides to the agency to avoid any future issues.

### **CONCLUSIONS OF LAW**

The agency incorrectly discontinued petitioner's FS effective September 1, 2013 for failing to complete her six month review as she provided proof that it was sent to the agency timely.

**THEREFORE, it is**

### **ORDERED**

That the petition herein be remanded to the county agency with instructions to review the SMRF forms provided to the agency on August 5, 2013, redetermine petitioner's FS eligibility retroactive to September 1, 2013 through October 1, 2013, issue any FS to the extent not already issued, and issue a notice of decision regarding same. These actions shall be completed within 20 days of the date of this Decision. In all other respects, the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of December, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 16, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability